Your Committee chosen on the 28 Sept.r "To divide the town into wards and fix the location of school-houses, and report how how many new school-houses are necessary and report their doings to an adjourned meeting" — would respectfully submit the following for your consideration. ——

Your Committee are aware of the difficulty of dividing the town into wards and locating school houses in such a manner that each and all of the inhabitants shall be equally well accommodated. The thing is impracticable in itself, and therefore not to be expected, however much it is to be desired. Moreover the multiplication of school houses, so as to meet the demand of the present applicants, would in our opinion be no furtherance to the cause of schooling — but would bring a heavy expence and prove a lasting burden to the town. ——

They are of the opinion that the only circumstance that should imperiously call for any addition to the number of school-houses must be the too full state of the present schools.

They are persuaded that the inconvenience of distance from the school-house which many labour under and complain off, cannot be brought forward <u>alone</u> as good reason for increasing the number of school houses. To illustrate; we suppose the following instance, namely. ——

If a number of the inhabitants in the south-west-part of the town, call on the town from reason of inconvenience of distance to better accommodate them with a house — there would be perhaps as many in the east and north who will make the same demand; — and after this there may be same in the south dissatisfied. — And for such reason alone if the town grant the request of the first named applicants — there is no plausible ground why they should not that of the last named also. And therefore it must appear manifest that if we should act from the inconvenience of distance alone, there would be no end to the multiplication of school-houses.

your Committee therefore come to the two following Resolutions, namely. —

1st that no addition should be made to the number of our school-houses farther than the number of scholars render it necessary.

2d that the location of each school-house should accommodate as to distance the majority of the inhabitants of the ward in which it stands. ——

Your Committee take the liberty to divide this report into three distinct parts, that each or all may be accepted or rejected as the town may judge proper. ——

Part first That the four nominal districts in town remain ~~as wards~~ bounded for the present, as they have been considered.

Part second That the town adopt measures to build a new school-house immediately in the South ward on the old site.

Part third That a new school-house be erected for a 5th ward near the house of Emerson Anthank, in the spring of 1836 and that the following individuals compose the members of said 5th ward. Deitta Fay, Stephen Newton Wid Judith Woodbury Isaac Smith Sylvester Newton, Joseph Thurston, Lowell A Newton, Lincoln Newton 2d, Sullivan Fay, Hewes Hunting, Artemas Fay, Curtis Newton Charles Tales, Ezra Bemis, Calvin Angier, Edmund Whipple, Wid Anna Fay, Emerson Anthank, Harry Hubbard, William Fay, Nathan Fay, Alanson Chamberlain. John Parker Jr. Rev Abisha Sampson. Gilbert D Wilson, Elij Flagg. Otis Flagg, Dana Flagg, Lowell Pike, Temple P Collins, Leland Flagg, Jonathan Walker house, Moses Fay, Ebenezer Hyde, Nathaniel Estes, Alexander W. Windell, Joel Orion.

Your co[illegible]
They be[illegible]
districts [illegible]
to be c[illegible]
school-[illegible]
and for n[illegible]
that each [illegible]
Besides school-districts can never be made equal in point of property. And it can never operate equally for school-districts to build their school houses and support them. There are other powerful reasons in favour of the town system; one of which is that the town system (districts or wards) require no geographical bounds and in it, individuals may by a vote of the town be shifted from one (school house ward) to another as circumstances shall from time to time require. — — — —

Willard Hopkins Chairman of the Committee

your Committee therefore come to the two following Resolution

1st that no addition should be made to the number of our sch
farther than the number of scholars render it necessary.

2d that the location of each school-house should accomm
the majority of the inhabitants of the ward in which
neighborhood

Your Committee take the liberty to divide this repor
parts, that each or all may be accepted or rejected as

The Inhabitants of the Town of Southbow; —

Your Committee chosen on the 15th. of October last, "to build a new School house in the south part of the Town — to repair the three brick School houses, and treat with individuals for their interest when they make it appear that they have rights in them" — respectfully report.

First. That they immediately proceeded to provide materials and erect a School house as authorised and directed by a vote of the Town, and that said house is in such a state of forwardness that the committee feel themselves warranted in saying it will be ready for use by the middle of December next.

Second — That the circumstances relative to the three brick School houses have been such as to induce the Committee to believe the time had not arrived when it was expedient for them to commence the repairs, altho. they would have done so had there not been a prospect of an adjustment concerning them, and had not the inhabitants been called upon to take the subject again into consideration.

Third — With regard to the remaining and by far the most difficult branch of their duty assigned them, namely the treating for the old school houses — your committee feel that in order to do justice to themselves, and those with whom they have been called upon to act, as well as to make the inhabitants of the Town fully acquainted with the progress and present state of the case, it will be necessary to go somewhat into detail. —

Nearly two weeks since your Committee were notified that some individuals from the West, Centre, and East School divisions, or districts, had held a meeting at the Centre School house and chose a committee of three persons from each of the three district, to present and prosecute their claims to the said School houses as their individual and private property. And your Committee was requested to meet the several Committees on the part of the

claimants on the evening of thursday November 19th —

At, and prior, to this meeting your committee learned that great diversity of opinion prevailed among the claimants themselves. For instance, One was for claiming the full original cost of the houses, and having the money divided among the surviving builders — Another thought the cost with the addition of interest should be the sum. Others that the present value should be the sum — while some of these would divide the money among the builders alone, while others ~~with a very liberal effect~~ would distribute it among the builders — the heirs of builders — and non-residents — And others were of opinion that justice demanded a distribution of the money among those who now compose what has been considered the districts — And others were willing without compensation to relinquish them to the Town, so they might continue to enjoy the same privelidge in them as heretofore —

It was under such circumstances that your committee met those in behalf of the claimants — At this meeting, Warrants, and Tax Books were presented for examination which your Committee ~~have~~ believe to be the same made use of to collect money to pay the expense of building the three brick School houses.

It was there contended by the claimant Committees that these documents were sufficient proof of their (the builders) being the sole owners of the houses. And your committee were asked to admit this, and treat with them for the houses upon this principle.

~~Your Committee did not, and could not, admit their claim in this form, both because they did not feel themselves authorised, and because they did not believe in the justice of it.~~

On the 21st of November your Committee met the Committee on the part of the claimants, and after organizing by choosing Capt Elisha Johnson Moderator, and Dr. Joel Burnett Secy. agreed to the following measures which were proposed by the Committee of the claimants, ~~and which were the subsidiary~~

~~on the part of both Committees relative to the disputed interests in the three brick school houses,~~

viz

"Voted that a Committee of three disinterested persons out of Town be elected to Apprize the three brick School houses, out houses, and furniture - and whose duty it shall be to make the disposition of the property.

Voted, That Jesse Woods be chairman of this committee

Voted, That Dea. Stephen R. Phelps be the second on this Committee

Voted, That Col. Jonas Clayes be the third on this Committee

Voted to request the above Committee to meet at the Centre School house on Thursday the 26 instant at 9 O'clock A.M.

Voted, That the report of the above Committee be sealed by them and handed to the Town's Committee to be by them laid before the Town." —

Considering the diversity of opinion before stated, your Committee were of opinion that refering the case to individuals mutually agreed upon, was the best, and indeed the only method of treating with those interested which would be likely to produce a favorable result.

In pursuance of the foregoing agreement the parties met on Thursday last, and the Committee to whom the subject was referred, after viewing the 3 houses, and hearing the statement of the Committee for the claimants on the one side, and your Committee in behalf of the right of the district on the other, proceeded to make up their report which they delivered sealed to your Committee, and which they now offer for your acceptance and disposal.

All which is respectfully submitted,

Per order

Southboro. November 28 1835.

Sullivan Fay Chairman

Voted to accept the report of said Committee

The subscribers to whoom was referred by the Committee of the Town of Southborough together with the Committee of their school districts, the subject of treating with the inhabitants of the Centre, East and West School districts in said town relative to their ~~relative~~ to their rights and property in said districts and the disposal of the same, having fully heared the parties and deliberately considered the subject, submit the following report.

That we are unanimous of the opinion that the houses and property belonging each of said districts should revert to the present inhabitants of said districts, and others owning real estate in the same, and that the Town should pay in consideration therefor as follows to wit.

To the centre district the sum of two hundred and ninety nine dollars.

To the west district the sum of two hundred and sixty four dollars.

To the East district the sum of two hundred and twenty dollars

All which is respectfully submitted by

Jesse Woods
S. R. Phelps
Jonas Clayes

Southborough
Nov.r 26. 1835

Report of the Committee
on the subject of School district property

Worcester Nov. 23. 1835.

Dear Sir,

Your of the 21st inst was taken by me from the Post Office this morning.

The result of the examination made by me of the records, deeds, and proceedings of the Town of Southborough in reference to their Schools and school houses, and School districts was as follows:

1. That no legal School districts had ever been established in that Town

2. That taking into consideration the supposed Conveyances to the School Districts, the manner in which the houses were built, the length of time and the objects and purposes for which they have been used and occupied, the property in the lands and houses is now to be considered as fixed and vested in, and belonging to, the Town.

Without going into any details upon the subject I believe the preceding propositions will be found to contain the substance of the opinions I have heretofore expressed to your Committee. If however there be any point omitted, I will reply to any further inquiry without delay.

I am very truly
Yours &c

Pliny Merrick

J. Hayes Esq

6

Sullivan Fay Esq
Postmaster,
Southborough.

Invoice of the South School District —

Names	Polls	Real	Personal
Eliot Amsden	1		
Austin Angier	1	14:..	3:97
Joseph Amsden	1		
Robert Ball	1		:20
Nathan Bridges	1		:04
Nathan Bruce	1		1:35
Elijah Bemis	3	36:00	4:49
Ezra Bemis	3		:52
Charles Burnett	1		2:26
Jesse Cheney		4:25	17
Temple P. Collins	1	3:00	:20
Jedidiah P. Collins	1		
Elijah Flagg	2	25:52	2:06
Dana Flagg	1	6:50	:25
Otis Flagg	1		
Russell Flagg	1		2:00
Lealand Flagg	1	6:55	:40
Moses Fay	3	12:00	3:53
Moses C. Fay	1	...	...
Dexter Graves	1	3:20	:20
Salmon Sibley	1	6 50	42
Ebenezer Ibida	1	20:00	2:00
Jonah Harvey	1	26:20	2:61
Levi Harrington	1	32:32	5:64
Jedidiah Harrington	1		
Nathaniel Este	1		
Samuel Johnson	1	17..00	2..69
Rufus Mixter	1		
Hezekiah Newton	1	1.50	
Jonas P. Newton	1	13..00	2.02
Josiah R. Newton	1		
Benjamin Onthank	1		1 66
John Parker	1	10..06	0 40
Lot Rice		13 20	1-12
Ebenezer S. Richards	2	13..52	2.11
Joseph B. Richards	1		
Stowell Richards	1		
Abisha Samson for the heirs	0		9..00
Daniel Warner	1	4.10	3-02
Daniel Warner jr 2d	1	10-92	2-17
Ephriam Ward	2	17 90	2 07
William Williams	1	2 50	0 20
Mason Whiting	1	16-70	1-90
Lambert Woods	2	6-30	1 04
Asa Woodbury	1		20
Gilbert S. Wilson	1	3..00	
Nuel Whetney	1	3 45	
Jonathan Walker	1	11-69	..00
John Williams 2d	1	10 62	2 07

Names	Polls	Real	Personal
Lincoln Williams	1		
Lyman Ward	1	0 0	2-00
Alexander Wendall	1		
Edmond C. Flagg	1		
Henry M. Richard	1		
Abisha Samson	1		0.60
W. Elizabeth Whiting		6 60	0 71
W. Polly Newton		3 00	0 20
Josiah Johnson		11:05	
Poor Establishment		30-00	4-00
Moses Whiting		26-00	
Jason Chamberlain F.		4 70	
Ebenezer Claflin F.		1 00	
Jonas Newton F.		0 40	
William How Premier		1-00	

No. Polls 61

Sum Total of this Invoice Errors — Excepted $525-40

Willard Newton
Jonas Ball } Assessors
Swain Parker

South School district
Invoice Dr 1035

Worcester Oct 14. 1835.

Dear Sir,

I regret that my necessary absence from Town for a few hours this morning prevents me from seeing the gentlemen who I understand were from South Hadley & Granby town. I have not met with either Mr Davis or Mr. Washburn since I returned.

I enclose the report which was left with me by Mr Fay, and have suggested such alterations as appear to me advisable. Besides what is written on the separate sheet, which I would recommend as a substitute for a part of the Report, I have marked a few words in pencil, which would make the report more conformable to the views I entertain, than as it now stands.

I am Respectfully &c

Your Obt Servt Merrick

S Fay Esq.

Sullivan Fay Esq
Postmaster
Southborough
Ms.

Worcester Oct. 13. 1835

Gentlemen,

Since the brief conferance I had with you, I have been obliged unexpectedly to be out of town untill this evening, and have had little opportunity to consider the questions which you proposed to me. As however your inhabitants have a town meeting tomorrow when the dispositions of your schools will be under their consideration I will state the result of such reflections as I have bestowed upon the subject.

In 1801 the town of Southboro in legal meeting appointed a committee to ~~advise~~ divide the town into school Districts. This committee reported a list of the names of the inhabitants assigning to each District certain persons but made no Division of the territory. Their report was accepted and their affairs, relating to schools have thenceforward been conducted, as if the town had been divided into territorial Districts—

Taxes have been levied, houses erected, lands conveyed, and money raised by the town from year to year, distributed on the assumption that legal districts under the doings of the town had been created—

~~determined by the Court~~ It has however been judicially determined by the court in 7th of Pick. page 106 and 12 Pick. 206 that no Districting except by geographical lines is valid for each District must be a distinct well defined territory.

It is then plain legal districts have never existed Southboro It is not easy to trace the consequences which may follow from this false step, for the town and the several Districts have managed their business as if school corporations existed and exercised the powers and functions belonging to them when in truth no such legal body has existed—

I am much inclined to the opinion that as to passed act in which all interested have acquiesced, it must be considered that school corporations have existed, and possibly in any question arising between them and the town, the town would be as much bound by its policy, as if it had created legal Districts,

for it has always waived all objections to the illegality untill recently.

But not so with others at least as respects future or present matters of contest. I will not however dwell on this view of the matter as it seems to me not very material to your inquiries –

The Districts being illegally organized you next Enquire to whom does the property heretofore considered as District property belong?

In the Centre District I understand the house was Erected by the District upon land granted to it by vote of the town.

If no Districts Existed at the time of the grant which could then or now be identified, it seems to me nothing passed by the vote for there were no grantees to take the interest, and the title remained after the vote as before, in the town:

The house,

Upon a reexamination of the Records of the Town of Southborough, I am of opinion that the Town has never been legally divided into School Districts.

It is in my opinion lawful for any town to refuse to make a division of its Territory into school districts, and to support schools in different parts of the Town at the Corporate Expence.

When the Town supports all the schools without any division into School Districts, the Town may lawfully regulate the places at which the Scholars shall respectively attend School, and if in so doing they provide that the Scholars in a certain described territorial district shall during the pleasure of the Town, and until further order, attend School at a particularly specified School house, this will not be a division of the Town into School Districts.

The right of dividing the Town into

School Districts, always remains in the Town; consequently after districts are once formed by the Town, they may at any time be altered or changed at the pleasure of the Town —

The votes passed at the recent Town meeting, if unaltered, will continue the duty of supporting Schools on the Town in its corporate capacity.

Percy Merrick

Worcester Oct 6 1835.

I am ~~asked~~ requested to give my opinion upon several questions in relation to the School Districts & School houses in the town of Southboro, and in order to be ~~ab~~ understood I state the questions & my views separately

1 Are there any legally constituted school districts in the town of Southboro such as are recognised as corporations by the Statutes of the Commonwealth?

I assume that there is no vote dividing the town except that in 1801 by which certain individuals named are constituted the "squadrons" or districts of the town

I consider this question settled by the case of Withington & Evelette 7 Pick Rep 106. where the court held that such a division of a town was not a defining of school districts such as is necessary to constitute them corporations within the Statutes.

There being then no legally constituted school districts the second question is to whom do the school houses already erected belong?

In answering this I regard the situation & rights of parties as to the several school houses as ~~entirely~~ distinct & in some respects different

The Centre school house I understand is placed upon the land of the town by their permission. Of course it is personal estate & may be treated as such. It was built by sundry individuals & ~~to~~ under the form of a tax - it was in effect a contribution of certain sums to a common purpose & those who contributed must be the owners of the property built with their money. It seems to me therefore that the original contributors & the legal representatives of those of them who are dead are the owners of that house in ~~1~~ shares proportioned to what they originally paid.

I understand the East school house stands upon land which was leased for a term of years. Of course the interest of the owners of that land would be a personal interest in effect so far as the house is concerned, for I understand the ~~land~~ can only be enjoyed while it is occupied by a school house kept for the purposes of a school house, and ~~if~~ the owners choose to remove the house from the land, as for aught I see they may do, the house would be personal estate & situated so far as ownership is concerned like the house in the Centre District.

In regard to the West district house a different rule applies. The house stands upon land conveyed

by Mr Stevens & Mr Temple to the Inhabitants of the town constituting the west school district & their assigns. It doubtless was supposed that this deed conveyed the land to the district as a corporation to be held in perpetuity. but as there was no corporation in fact it amounted to a deed to the Individuals who were known & recognised as the west school district by the records of the town or otherwise at the date of the deed. In the next place as the conveyance was not to them & their heirs they severally took an estate in Common for life - and the same belongs to the survivors of those who constituted the Individuals known as the west school district when the deed was made. These only can convey the house, & it is extremely doubtful if they can convey any interest in it for a longer period than the life of the longest liver of them. But this will probably become immaterial when the parties understand their respective rights.

If therefore the town or new districts should wish to purchase these houses they may know with whom to treat & whom to pay.

I make no allusion to the rights of the owners of the East school district house, to the land under the late statute made in reference to such long

houses for as they will not probably be disposed individually to support a school there, the house itself would be what ~~was~~ is chiefly valuable to the owners.

In regard to the stoves now in the houses I understand they were purchased & placed ~~in~~ there within a few years by means of money raised by a Tax. If my reasoning as to the houses is correct the stoves would belong to the individuals who in fact purchased & paid for them.

Ezra Washburn

Worcester Oct 1 1855